

Readopt He-M 609.01, effective 8-23-08 (Document # 9240), cited and to read as follows:

PART He-M 609 CONDITIONAL DISCHARGE

Statutory Authority: RSA 135-C:52; RSA 135-C:61, X and XII

He-M 609.01 Purpose. The purpose of these rules is to define the criteria and procedures for conditional discharge of a person involuntarily admitted to a facility and for the revision and revocation of the conditional discharge.

Readopt with amendment He-M 609.02, effective 8-23-08 (Document #9240), as amended effective 7-18-14 (Document #10641), to read as follows:

He-M 609.02 Definitions.

- (a) “Administrator” means the superintendent or other chief executive officer of a facility.
- (b) “Advance practice registered nurse (APRN)” means “advanced practice registered nurse” as defined in RSA 135-C:2, II-a, namely “an advanced practice registered nurse licensed by the board of nursing who is certified as a psychiatric mental health nurse practitioner by a board-recognized national certifying body.”
- (c) “Clinician” means a person who is qualified to provide community mental health services pursuant to He-M 426.08 (h)-(m).
- (d) “Commissioner” means the commissioner of the department of health and human services.
- (e) “Community mental health program (CMHP)” means “community mental health program” as defined in RSA 135-C:2, IV, namely “a program established and administered by the state, city, town, or county, or a nonprofit corporation for the purpose of providing mental health services to the residents of the area and which minimally provides emergency, medical or psychiatric screening and evaluation, case management, and psycho-therapy services.” The term includes the term community mental health provider.
- (f) “Conditional discharge” means the release of a person from a facility during a period of court-ordered involuntary admission on the condition that the person comply with specific provisions of community-based treatment or be subject to readmission to a facility.
- (g) “Department” means the New Hampshire department of health and human services.
- (h) “Emergency service staff member” means a CMHP clinician who provides short-term clinical/psychiatric evaluation, treatment, and referral for persons experiencing acute symptoms of a mental illness and in accordance with He-M 426.08(h)(1).
- (i) “Facility” means New Hampshire hospital or any other treatment program designated as a receiving facility under RSA 135-C:26 to receive persons for involuntary admission under RSA 135-C:34-54 and involuntary emergency admission under RSA 135-C:27-33.
- (j) “Informed decision” means a choice made voluntarily by a patient or applicant for services or, where appropriate, such person’s legal guardian, after all relevant information necessary to making the choice has been provided, when:

- (1) The person understands that he or she is free to choose or refuse any available alternative;
- (2) The person clearly indicates or expresses his or her choice; and
- (3) The choice is free from all coercion.

(k) “In need of care” means a situation where a conditionally discharged person no longer requires inpatient treatment but where a prescribed regimen of medical psychiatric or psychiatric care or treatment is required to prevent the recurrence of the circumstances which led to the person’s dangerous condition.

(l) “Involuntary admission” means an order of involuntary commitment made pursuant to RSA 135-C:34-54 by a probate court.

(m) “Law enforcement officer” means a person identified in RSA 630:1, II.

(n) “Psychiatrist” means “psychiatrist” as defined in RSA 135-C:2, XIII, namely, “a physician licensed to practice in New Hampshire who is either board-certified or board-eligible according to the most recent regulations of the American Board of Psychiatry and Neurology, Inc., or its successor organization.”

(o) “Treatment team member” means a mental health clinician who is qualified pursuant to He-M 426.08 (h)-(m) and who shares ongoing responsibility for the care and treatment of a CMHP client.

Readopt with amendment He-M 609.03, effective 8-22-08 (Document 9240), as amended, effective 7-18-14 (Document # 10641), to read as follows:

He-M 609.03 Grant of Conditional Discharge.

(a) The administrator of a facility shall grant a conditional discharge to a person who has been involuntarily admitted to the facility pursuant to RSA 135-C:34-54 when the following criteria have been met:

- (1) The person is determined to be in need of care;
- (2) A recommendation for conditional discharge of the person has been made in accordance with the procedures in He-M 609.03(b); and
- (3) The person or his or her guardian understands and, following an informed decision, consents to the conditions and term of discharge, including any requirement for participation in continuing treatment on an outpatient basis.

(b) A recommendation for conditional discharge of a person shall be made to the administrator of a facility by a psychiatrist or APRN at the facility only after a conference has been held, pursuant to He-M 401.10 or 410.11, in which:

- (1) The psychiatrist or APRN participated and concurred in the results thereof;
- (2) A determination has been made that the person is in need of care and the mental health treatment and supervision needed by the person can be provided in a CMHP or other setting which is less restrictive of the person’s freedom and ability to make informed decisions;

(3) A recommendation for conditional discharge has been adopted; and

(4) The person, community mental health center representative, and DRF staff have agreed to the term of and conditions for discharge.

(c) The facility to which the person to be conditionally discharged has been involuntarily admitted shall inform the person and his or her guardian, if any, orally and in writing of the term and conditions of discharge and of the criterion and process for revocation of conditional discharge.

(d) No conditional discharge shall be granted by a facility unless the person to be discharged or his or her guardian, if any, has knowledge of and, following an informed decision, consents to the term and conditions of discharge and the provisions of He-M 609. Consent shall be documented in writing.

(e) The term of conditional discharge granted to a person under He-M 609 shall not exceed the period of time remaining on the person's order of involuntary admission made pursuant to RSA 135-C:34-54.

(f) Information regarding a person's conditional discharge shall be shared between the community mental health center and the facility serving the person as necessary to treat him or her and to otherwise carry out the purposes of RSA 135-C and He-M 609.

Readopt He-M 609.04, effective 8-21-08 (Document #9240), as amended effective 7-18-14 (Document #10641), to read as follows:

He-M 609.04 Grant of Absolute Discharge.

(a) The administrator of a facility from which a person has been conditionally discharged shall grant to such person an absolute discharge at the end of the term of the conditional discharge unless the discharge earlier has been revoked in accordance with RSA 135-C:51, VI or He-M 609.06 or unless another order of involuntary admission of the person has been made pursuant to RSA 135-C:34-54.

(b) The administrator of a facility from which a person has been conditionally discharged shall grant to such person an absolute discharge when, within the previous 3 days, a psychiatrist or APRN at the CMHP providing continuing treatment to the person on an outpatient basis has:

(1) Examined the person;

(2) Determined that the person is no longer in need of care; and

(3) Recommended that an absolute discharge be granted.

(c) The administrator, in writing, shall immediately notify the court which made the original order of involuntary admission pursuant to RSA 135-C:34-54 and the person's guardian, if any, that the person has been granted an absolute discharge.

Readopt He-M 609.05, effective 8-23-08 (Document #9240), as amended effective 7-18-14 (Document #10641), to read as follows:

He-M 609.05 Revision of Conditions.

(a) If at any time the term and/or conditions of a conditional discharge granted pursuant to He-M 609.03 are revised, such revision shall be in accordance with the following procedures:

- (1) The revisions shall be proposed by:
 - a. The CMHP serving the person conditionally discharged;
 - b. The person conditionally discharged or his or her guardian, if any; or
 - c. The facility from which the person was conditionally discharged;
- (2) The proposed revision shall be forwarded in writing by the proposing party to the other parties;
- (3) The administrator, or designee, of the CMHP receiving proposed revisions shall review them and either:
 - a. Accept the proposed revisions and convey the decision in writing to the party making the proposal; or
 - b. Decline the proposed revisions or propose amended revisions and convene a conference pursuant to He-M 401.12 to consider the proposed revisions;
- (4) Revisions of the term and/or conditions of the conditional discharge shall only be adopted:
 - a. As a result of a conference;
 - b. By a psychiatrist or APRN at the CMHP; and
 - c. With the consent, following an informed decision, of the person conditionally discharged or his or her guardian, if any;
- (5) Any revisions agreed to at the conference shall be in writing and signed by the person subject to the conditional discharge, his or her guardian, if any, and the psychiatrist or APRN; and
- (6) The CMHP shall file a copy of the revisions in the person's medical record and provide a copy to the person, his or her guardian, if any, and the facility from which the person was conditionally discharged.

Readopt with amendment He-M 609.06, effective 7-24-13 (Document #10386), to read as follows:

He-M 609.06 Revocation of Conditional Discharge.

(a) Pursuant to RSA 135-C:51, a psychiatrist or A.P.R.N. at a CMHP providing continuing treatment on an outpatient basis to a person conditionally discharged pursuant to RSA 135-C:50 may conduct, or cause to be conducted by a treatment team member or an emergency service staff member, an examination of the person to determine if the conditional discharge should be revoked.

(b) An examination pursuant to (a) above shall only be conducted if the psychiatrist or A.P.R.N. reasonably believes that:

(1) The person has violated a condition of the discharge; or

(2) A condition or circumstance exists which might create a potentially serious likelihood of danger to the person or to others.

(c) Before an examination is conducted, the CMHP shall prepare a written notice identifying the belief, and the reasons therefor, that a violation of the conditional discharge has occurred or other circumstances or conditions exist which might create a potentially serious likelihood of danger to the person or to others.

(d) Pursuant to RSA 135-C:51, I(b), a CMHP representative shall offer and explain the written notice to the person prior to the examination.

(e) The CMHP shall make a reasonable effort to find the person in order to offer and explain the written notice.

(f) If the person cannot be located or if consent to an examination cannot be obtained, the psychiatrist or other representative of the CMHP may sign a complaint to compel examination.

(g) Upon issuance of such a complaint, any law enforcement officer shall take custody of the person and immediately deliver him or her to the place specified in the complaint.

(h) If the psychiatrist or A.P.R.N., following the examination, finds that the person has either violated a condition of the discharge or is in such a mental condition as a result of mental illness as to create a potentially serious likelihood of danger to himself or herself or to others, he or she may temporarily revoke the conditional discharge. If the person has failed to keep an appointment, a conditional discharge may be temporarily revoked only if the failure to attend the appointment interferes with the responsibility of the CMHP to provide monitoring and/or treatment.

(i) If the conditional discharge is temporarily revoked:

(1) The psychiatrist or A.P.R.N., or his or her designee, shall prepare, offer and explain to the person a written notice giving the reasons for the revocation; and

(2) The psychiatrist or A.P.R.N. shall identify the receiving facility to which the person is to be delivered.

(j) A law enforcement officer shall take custody of the person whose conditional discharge has been temporarily revoked and shall deliver him or her, together with a copy of the notice, to the receiving facility identified by the psychiatrist or A.P.R.N.

(k) The administrator of the facility to which a person has been returned, or his or her designee, shall:

(1) Personally examine such person;

(2) Review the reasons for temporary revocation of the conditional discharge; and

(3) Revoke absolutely the conditional discharge if he or she finds that the person either:

- a. Has violated a condition of the discharge; or
- b. Is in such a mental condition as a result of mental illness as to create a potentially serious likelihood of danger to self or to others.

(l) The examination, review and determination shall be made within 72 hours, excluding Sundays and state legal holidays, of delivery of a person to a facility pursuant to (j) above.

(m) If the administrator of the facility, or his or her designee, determines that an absolute revocation is warranted, he or she shall immediately prepare, offer and explain to the person the information in a written notice of the revocation and the reasons for the revocation, and notice of the person's right to appeal and right to legal counsel as set forth in He-M 609.07. Any administrator, of any facility, may absolutely revoke a person's conditional discharge, regardless of which facility initially executed the conditional discharge with the person.

(n) The person shall be subject to the terms and conditions of the order of involuntary admission made pursuant to RSA 135-C:34-54 from which conditional discharge was granted as if such conditional discharge had not been granted.

(o) If the administrator of the facility, or his or her designee, determines that an absolute revocation is not warranted, the facility shall return the person to the location where he or she was taken into custody.

(p) If the person is returned, he or she shall then be subject to the term and provisions of conditional discharge that were in effect prior to the temporary revocation of the conditional discharge.

(q) A person conditionally discharged may be admitted to a facility through an involuntary emergency admission (IEA) under RSA 135-C:27-33.

(r) When a person conditionally discharged has been admitted to a facility by an IEA, the finding of probable cause for IEA by the district court shall authorize the person's admission for not longer than a 10 day period as provided in RSA 135-C:32, unless during the period of IEA the person's conditional discharge is absolutely revoked pursuant to (s) below.

(s) A facility administrator shall absolutely revoke a person's conditional discharge when the person has been admitted to a facility by an IEA and the administrator of the facility, or his or her designee, has personally examined the individual and found that the person either:

- (1) Has violated a condition of the discharge; or
- (2) Is in such a mental condition as a result of mental illness as to create a potentially serious likelihood of danger to self or others.

(t) If a conditional discharge is absolutely revoked pursuant to (s) above, the administrator, or his or her designee, shall first prepare, offer and explain to the person a written notice of the revocation and the reasons therefor and notice of the person's right to appeal and right to legal counsel as set forth in He-M 609.07. Notice shall also be provided by the administrator, or his or her designee, orally or in writing to the guardian, if any.

(u) If a conditional discharge is absolutely revoked, in addition to the notice given in (t) above, the department shall:

(1) Provide legal counsel from a list of private attorneys, maintained by the department's bureau of behavioral health who are not directly employed by the department, and who contract with the department to represent persons for administrative proceedings at no cost to the person;

(2) Provide patient contact information to the assigned private attorney in order for the attorney to:

a. Meet with the person, and the person's guardian if he or she requests, to discuss the implications of the person's initial decision not to appeal the absolute revocation and the avenues of legal recourse available to the person, including an appeal, and either:

1. Obtain a written waiver of appeal signed by the person; or

2. Notify the department of the person's final decision to appeal the absolute revocation so that the matter may be referred to the administrative appeals unit and scheduled for a hearing; and

b. Represent the person for the appeal hearing of the absolute revocation of the conditional discharge if:

1. The person appeals the absolute revocation; or

2. The person's guardian or the guardian's attorney appeals the absolute revocation of the conditional discharge; and

(3) Provide notice to the person's guardian, if any, of the person's decision to waive or exercise his or her option to appeal the absolute revocation of the conditional discharge and provide the guardian with an opportunity to participate in the hearing with or without his or her attorney of choice.

(v) If the written notices of revocation as referenced in (d), (i), (m), and (t) above cannot be offered to and explained to the person safely without significant possibility of bodily harm, a description of the circumstances indicating such risk shall be provided to the person's guardian, if any, and placed in the person's file for each notice.

Readopt He-M 609.07, effective 7-18-14 (Document #10641), to read as follows:

He-M 609.07 Appeal of Revocation.

(a) A person or his or her guardian, if any, whose conditional discharge has been absolutely revoked by the administrator of a facility, or his or her designee, pursuant to He-M 609.06(j) may appeal the decision to the commissioner.

(b) Upon the request of the person or his or her guardian, a person appealing absolute revocation of conditional discharge may obtain assistance from the facility in effecting the appeal.

(c) The appeal shall:

(l) Be in writing;

- (2) State that a hearing is requested;
- (3) State whether or not assistance of legal counsel is requested at such a hearing; and
- (4) Include such information related to the basis for the appeal as the person or his or her guardian, at the time, may elect to offer.

(d) The facility shall submit the appeal to the commissioner, together with copies of all notices provided to the person pursuant to He-M 609.06 and any other information relevant to the reasons for revocation of the conditional discharge.

(e) If a hearing on the appeal has been requested, the commissioner, or his or her designee, shall:

- (1) Obtain legal counsel for the person; and
- (2) Conduct a hearing on the appeal within 5 working days of the commissioner's receipt of the request for a hearing.

(f) Hearings on appeals filed under He-M 609.07 shall be conducted in accordance with He-C 203.

(g) Following a hearing, the commissioner, or his or her designee, shall, within 3 working days, decide if the person either has violated a condition of the discharge or is in such a mental condition as a result of mental illness as to create a potentially serious likelihood of danger to self or to others. In reaching a decision, only evidence presented at the hearing shall be considered.

(h) The burden shall be upon the state to establish that the criterion for revocation of the conditional discharge is met by clear and convincing evidence.

(i) The decision made by the commissioner, or his or her designee, shall:

- (1) Be in writing;
- (2) State the reasons for the decision; and
- (3) Be sent promptly to the person appealing, his or her guardian, his or her legal counsel, if any, and the facility and CMHP that revoked the conditional discharge of the person.

Appendix

Rule	State Statute Implemented
He-M 609.01	RSA 135-C:13, 18, 56, 57 & 59
He-M 609.02	RSA 135-C:13, 18, 56, 57 & 59
He-M 609.03	RSA 135-C:59
He-M 609.04	RSA 135-C:56
He-M 609.05	RSA 135-C:56, 57; RSA 135-C: 19-a; RSA 329, 330-A; RSA 329-B; & RSA 326-B
He-M 609.06	RSA 135-C:57
He-M 609.07	RSA 135-C:18

